

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JOEL F. HOLUBAR)	
and)	
MARIANA H. HOLUBAR,)	
)	
Plaintiffs)	
)	
v.)	Civil Action No. 03-CV-12404-NG
)	
KENT KHOLBERGER,)	
CHASE-FREEDMAN FAMILY TRUST)	
and)	
M/Y CHEROSA, <i>in rem</i> ,)	
)	
Defendants)	
)	

MEMORANDUM IN SUPPORT OF MOTION OF DEFENDANT
CHASE-FREEDMAN FAMILY TRUST FOR PROTECTIVE ORDER

In support of the Motion of Defendant Chase-Freedman Family Trust (the "Trust") for Protective Order, the Trust relies on Fed. R. Civ. P. 26(c).

Pursuant to Local Rule 37.1, the Trust states that its counsel, Curtis Pfunder and Edward Radzik, conferred on August 13, 2004 by telephone with plaintiffs' counsel, Kurt Bratten and Bjorn Holubar, concerning the subject of the Trust's motion for protective order.

The nature of the case is plaintiffs' claim for damages allegedly caused by defendants' larger boat allegedly going too fast in the Cape Cod Canal and allegedly causing a large wake to impact plaintiffs' smaller boat. Defendants deny plaintiffs' claims. The relevant facts are set forth in the Trust's motion. L.R. 37.1(3).

A copy of the unsigned draft notice of deposition at issue is attached hereto.

L.R. 37.1(4).

The Trust's position as to each contested issue is set forth in its motion. See
L. R. 37.1(5).

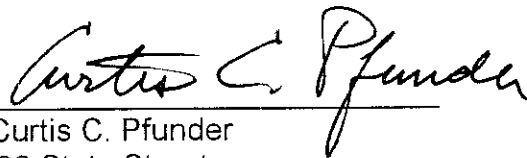
Conclusion

The Trust's motion for protective order under Rule 26(c) should be granted, and
plaintiffs should not be permitted to depose the Trust.

Respectfully submitted,
The Chase-Freedman Family Trust,
by its attorneys,

Date: August 13, 2004

Edward C. Radzik, Esq.
Donovan Parry McDermott & Radzik
Wall Street Plaza
88 Pine Street
New York, NY 10005-1801
(212) 376-6400

A handwritten signature in black ink, reading "Curtis C. Pfunder". The signature is written in a cursive style with a horizontal line underneath it.

Curtis C. Pfunder
92 State Street
Boston, MA 02109
617 248-0200
BBO#397700

Attorneys for Defendants

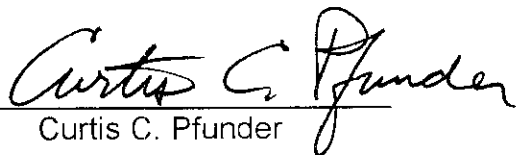
Certificate of Service

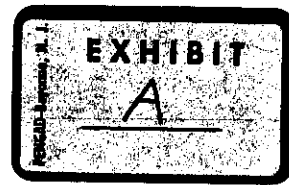
I certify that on this 13 day of August, 2004 I served a copy of the above document on counsel for plaintiffs as indicated below by U.S. mail / _____:

Bjorn J. Holubar, Esq.
770 Lexington Avenue, 7th Floor
New York, NY 10021
516-446-1546 direct
212 980-1992

Kurt E. Bratten, Esq.
Lucash, Gesmer & Updegrove LLP
40 Broad Street
Boston, MA 02109

Counsel for Plaintiffs


Curtis C. Pfunder



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

-----X
:
JOEL F. HOLUBAR, :
 & :
MARIANA H. HOLUBAR, :
 :
 Plaintiffs, :
 :
 v. : Civil Action No. 03-CV-12404-NG
 :
 KENT KHOLBERGER; :
 THE CHASE FREEDMAN-FAMILY TRUST; :
 & :
 M/Y CHEROSA, *in rem*, :
 :
 Defendants. :
 :
-----X

To: Curtis C. Pfunder
92 State Street
Boston, Massachusetts 02109

Edward C. Radzik, Esq.
Donovan Parry McDermott & Radzik
Wall Street Plaza
88 Pine Street
New York, New York 10005-1801

**NOTICE OF DEPOSITION OF DEFENDANT
THE CHASE FREEDMAN-FAMILY TRUST PURSUANT TO FED.R.CIV.P.30(b)(6)**

TAKE NOTICE that pursuant to Fed.R.Civ .P. 30(b)(6), Plaintiffs in accordance with Plaintiffs' Notices Deposition previously scheduled for June 17, 2004, as a result of defendant's refusal to appear without providing objection as prescribed by the Fed.R.Civ.Pro. nor request for adjournment, shall be rescheduled for August 19, 2004, maintaining Plaintiffs' priority in discovery, of the Defendant The Chase Freedman-Family Trust through one or more of its officers, directors, managing personal or other persons who consent to testify on defendant's behalf, who are most

knowledgeable with respect to the subject matter listed in the attached Schedule A.

The depositions will be by oral examination before a Notary Public or other officer authorized by law to administer oaths. The testimony will be recorded by stenographic and/or video graphic means.

The depositions shall be held August 19, 2004 at the law office of Plaintiffs' counsel Gesmer & Updegrove LLP, 40 Broad Street, Boston, Massachusetts 02109 commencing at 9:00am. The depositions will continue from day to day, excluding weekend and United States and Canadian federal holidays, until completed.

Failure to obey this Notice of Deposition may be deemed contempt of the United States District Court for the District of Massachusetts.

DATED: June 14, 2004

Lee T. Gesmer (BBO #190260)
Kurt Bratten (BBO #644730)
Gesmer Updegrove LLP
40 Broad Street
Boston, Massachusetts 02109
1-617-350-6800 (phone)
1-617-350-6878 (fax)

Bjorn J. Holubar, *pro hac vice*
770 Lexington Avenue, 7th Floor
New York, New York 10021
1-212-980-1992 (direct)
1-212-755-4199 (fax)
Attorneys for Plaintiffs

SCHEDULE A

1. All materials related to M/Y Cherosa, including matters of ownership and insurance.
2. M/Y Cherosa, its operation, ownership, deck hands, ports of call, during the calendar year 2001;
3. Events of August 24, 2001, beginning 12:01am-11:59pm;
4. Subsequent actions by the United States Coast Guard regarding events of on August 24, 2001, concerning the M/Y Cherosa and Kent Kholberger;
5. Subsequent actions by the United States Army Corp. of Engineers events of August 24, 2001, concerning the M/Y Cherosa and Kent Kholberger, and
6. The documents and other items listed in Plaintiff's Request for Document Requests and Plaintiff's Interrogatories.

Definitions

A. The term "material(s)" means any medium upon which information may be printed or recorded or from which information can be recorded, including, without limitation, the foregoing: accountants' reports, accountings, advertisements, affidavits, agendas, agreements, analyses, analytical results, announcements, annual, quarterly, and other corporate reports filed with the United States Securities and Exchange Commission, appointment books, appraisals, architectural and engineering plans, articles in newspapers, magazines, journals and periodicals articles of incorporation and amendments, audio recordings, authorizations, bid specifications, bids, bills of lading, bills, blueprints, books, books or records of account, brochures, bulletins, calculations, chain of custody sheets, charts, checks, codes and instructions to retrieve, obtain and interpret same, computer discs and tapes, computer printouts, contracts, corporate minutes, correspondence, data processing cards, data sheets, deeds, desk calendars, diagrams, diaries, documents evidencing title, drafts, drawings, evaluations, drawings, field notes, films, folios, forms, graphs, guidelines, indices, information contained in or on or retrievable from computer programs, or other electronically recorded information along with any manuals, inter-office and intra-office communications and directives, interviews, inventory lists, invoices, laboratory bench sheets, laboratory printouts, laboratory sheets, layouts, leaflets, leases, ledgers, ledgers, letters, licenses, literature, maintenance records, manifests, manuals, maps, memoranda, microfilm, minutes of meetings, minutes, movies, negatives, notations, notes, notices, opinions, orders, pamphlets, papers, payroll records, performance results, permits, phone logs, phone messages, photographs, plans, pleadings, plots, policies, price lists, proposals, publications, punch lists, questionnaires, quotations, receipts, records, records of telephone conversations, interviews, conferences, meetings of other conversations, regulations, renderings, reports filed with governmental agencies, reports, requests for proposal, schematics, searches, securities ledgers, shipping and mailing records, shipping papers, shop logs, sketches, slides, specifications, standards, statements, stenographic notes, statements of account, strip charts, studies, summaries, surveys, synopses, tabulations, telefax, telegrams, teletypes, telex messages, test results, title titles, transcripts, transparencies, videotapes, vouchers, warranties, weigh fills, working papers, and yard books. The term shall also apply to all no identical copies thereof whenever such copies differ from the original by virtue of written notations, revisions, underlining, highlighting, or any other alteration.

B. The term "all" means each, every and any material that might reasonably be located through a search of all locations likely to contain such materials.

C. All other terms not otherwise defined herein shall take on the definitions as set forth in Plaintiffs' 1st Set of Document Requests to Defendants.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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JOEL F. HOLUBAR,	:	
&	:	
MARIANA H. HOLUBAR,	:	
	:	
Plaintiffs,	:	
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v.	:	
	:	Civil Action No. 03-CV-12404-NG
KENT KHOLBERGER;	:	
THE CHASE FREEDMAN-FAMILY TRUST;	:	
&	:	
M/Y CHEROSA, <i>in rem</i> ,	:	
	:	
Defendants.	:	
-----X	:	

CERTIFICATE OF SERVICE

I, Bjorn J. Holubar, hereby certifies as follows:

I am an attorney-at-law of the State of New York and admitted to the Bar of this Court *pro hac vice*. I hereby certify that on this 14th day of June 2004 I caused copies of Plaintiffs' 30(b)(6) demand to The Chase Freedman-Family Trust be served via E & REGULAR MAIL upon the following:

Curtis C. Pfunder
92 State Street
Boston, Massachusetts 02109

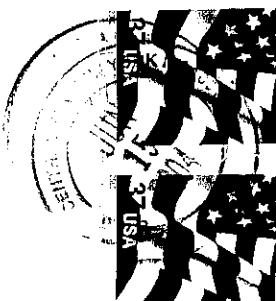
Edward C. Radzik, Esq.
Donovan Parry McDermott & Radzik
Wall Street Plaza
88 Pine Street
New York, New York 10005-1801

DATED: June 14, 2004

Bjom J. Holubar, Esq.

Attorneys & Counselors at Law

• • •



|||||

Curtis C. Pfunder, Esq.

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770 Lexington Avenue, 7th Floor • New York, New York